Property Settlement Agreement
11 USC § 523(a)(15)

Carlson v. Carlson, Adversary No. 02-6006
In re Scott Carlson, Case No. 01-67039-fra7

12/15/2002 FRA Unpublished

Husband and Wife filed for divorce and prepared and signed a property settlement agreement which, by its terms, was entered into in contemplation of eventual entry into the dissolution proceedings. Husband filed for bankruptcy while divorce proceedings were still pending and Wife filed this adversary proceeding seeking a judgment declaring that the Husband's obligations under the marital settlement agreement are excepted from discharge under Code § 523(a)(15). Husband filed a motion for summary judgment asking that the case be dismissed.

Under Oregon law, a property settlement made in anticipation of a dissolution proceeding is enforceable only when found by the dissolution court to be equitable under the circumstances. Wife wished the dissolution court to enter a decree ratifying the settlement agreement, while the Husband , citing changes in circumstances, seeks difference relief.

The Bankruptcy Court held that any controversy concerning discharge of debts created under the property settlement agreement is not ripe until the decree of dissolution is entered, as the

division of property and debts cannot be said to be fixed until the settlement agreement is ratified by the dissolution court. The Bankruptcy Court abated the adversary proceeding until such time as a decree is entered dissolving the parties' marriage or the pending dissolution case is dismissed.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No. 601-67039-fra7
SCOTT MICHAEL CARLSON,	)	
Debtor.	)	
SHERRYL CARLSON,	)	Adversary Proceeding No. 02-6006-fra
Plaintiff,	)	
vs.	)	
SCOTT MICHAEL CARLSON,	)	
Defendant.	)	MEMORANDUM OPINION

This case demonstrates the difficulties often encountered by parties who simultaneously undertake bankruptcy and dissolution of marriage proceedings. Because I believe that the parties' marital settlement agreement cannot presently be enforced by this Court, I grant the Defendant's motion for summary judgment, and order that this adversary proceeding be held in abeyance.

Scott Michael Carlson, the Debtor/Defendant, and Sherryl Carlson are husband and wife. The essential facts are not in dispute:

On August 31, 1999, Wife filed a petition in the Circuit Court for Jackson County, Oregon, seeking to dissolve the parties' marriage. On July 25, 2000, the parties prepared and signed a marital settlement agreement (MSA) dividing their property and providing for support payments. The MSA was, by its terms, entered into in contemplation of the eventual entry of a decree dissolving the parties' marriage. As of this writing, however, no decree has been entered in the dissolution proceedings. I am advised that a trial is set before the Circuit Court in Jackson County for February 27, 2003.[1] Since the execution of the marital settlement agreement, the parties have had some disputes over support, which are not germane to this proceeding. The parties indicated at oral argument on the instant motion that their current posture before the Circuit Court is that the Wife wishes the Court to enter a decree ratifying and enforcing the marital settlement agreement, while the Husband, citing changes in circumstances since the time the agreement was entered, seeks different relief.

Husband filed his petition for relief in this Court on September 17, 2001. On January 1, 2002, Wife filed this action, seeking a judgment of this Court declaring that the Husband's obligations under the marital settlement agreement are excepted from discharge pursuant to 11 U.S.C. § 523(a)(15).

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[1] Strictly speaking, the divorce proceedings may be stayed by 11 U.S.C. § 362. However, this Court will enter a separate order pursuant to 11 U.S.C. § 362(d) modifying the stay and authorizing the Circuit Court to proceed to enter any relief available to the parties under O.R.S. Chapter 107.

DISCUSSION

Code § 523(a)(15) excepts from discharge obligations incurred by the debtor "in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record....", subject to certain affirmative defenses. Clearly, the marital settlement agreement was incurred "in the course of a divorce." The question, however, is whether or not the MSA can be said to be the basis of a claim. This requires an exploration of Oregon law regarding marital settlement agreements.

Under Oregon law, a property settlement made in anticipation of a dissolution proceeding is strictly enforceable only when found by the dissolution court to be equitable under the circumstances. In re Marriage of Bach, 27 Or.App. 411, 555 P.2d 1264 (1976). The court is not required to accept the parties' settlement agreement and may, on consideration, reject the agreement as unfair to one or the other of the parties. McDonnal and McDonnal, 293 Or. 772, 652 P.2d 1247 (1982). As the Oregon Court of Appeals states:

> The role of the trial judge in a dissolution case is to ensure the fairness of the property division. If, after the parties have reached an agreement on a property settlement, the judge does not agree that it is fair, he may disregard it, or treat it as evidence, and order a contested hearing at any time until the judgment has been signed by the judge and entered.

In the Matter of the Marriage of Wrona and Wrona, 656 Or.App. 690, 674 P.2d 1213 (1984).

In short, the marital settlement agreement is not binding on the dissolution court, or, for that matter, any reviewing court on

appeal, since Oregon courts review decrees of dissolution *de novo*. In the Matter of the Marriage of Ashbury and Ashbury, 129 Or.App. 96, 877 P.2d 1213 (1994).

It is true that property settlement agreements are generally given effect if found to be just and proper in the circumstances. See, e.g. In the Matter of the Marriage of Mollier and Mollier, 33 Or.App. 575, 577 P.2d 94 (1978). However, it is not the province of this Court to review the marital settlement agreement. There is a long established policy that federal courts will abstain from hearing domestic relations matters. See Swate v. Hartwell, 99 F.3d 1282,1287 (5th Cir. 1996)(citing Simms v. Simms, 175 U.S. 162, 167 (1899)); Forsdick v. Turgeon, 812 F.2d 801,804 (2d Cir. 1987)(citing Simms v. Simms, supra). Moreover, O.R.S. 107.105 requires that the state court, in the course of dissolving the marriage, distribute property, provide for the care, custody and visitation of minor children, and make support awards. The courts are required to consider all of these factors together, a requirement which would be thwarted if another court intervened and allocated property or approved settlement agreements.

Since the division of the parties' property and debts, and ensuing obligations, cannot be said to be fixed until the marital settlement agreement is ratified by the dissolution court, any controversy with respect to discharge of those debts is not ripe until the decree of dissolution is entered.

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It follows that this Court does not have jurisdiction to act, at least at present, and that it would be inappropriate to act even if jurisdiction is present.

What remains to be determined is whether, if the marital settlement agreement is ratified by the dissolution court, claims based on the agreement are prepetition obligations subject to discharge in Debtor's bankruptcy case. Rather than speculate on this point, I will allow summary judgment in part, and order that further proceedings be abated until a decree is entered dissolving the parties' marriage, or the pending dissolution case is dismissed.

Husband's counsel should submit a form of order consistent with the foregoing, together with a separate form of order modifying the automatic stay with respect to the pending dissolution proceedings.

FRANK R. ALLEY, III
Bankruptcy Judge